UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555 (JMP)

08-01420 (JMP)(SIPA)

(Jointly Administered)

- x

In Re:

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Debtors.

- x

In Re:

LEHMAN BROTHERS, INC.,

Debtor.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

September 19, 2012

10:01 AM

B E F O R E :

HON JAMES M. PECK

U.S. BANKRUPTCY JUDGE

Hearing re: Application of the Ad Hoc Group of Lehman Brothers Creditors for Compensation for Professional Services Rendered by, and Reimbursement of Actual and Necessary Expenses of, Its Professionals Pursuant to Section 503(b) of the Bankruptcy Code Rendered by, and Reimbursement of Actual and Necessary Expenses of, Its Professionals Pursuant to Section 503(b) of the Bankruptcy Code [ECF No. 29195]

Hearing re: Application of the Ad Hoc Group of Holders of Notes Issued by Lehman Brothers Treasury Co. B.V. and Guaranteed by Lehman Brothers Holdings, Inc., Pursuant to 11 U.S.C. § 503(b) for Allowance of Administrative Expenses for Counsel's Services Incurred in Making A Substantial Contribution in These Chapter 11 Cases [ECF No. 29222]

Hearing re: Application of Goldman Sachs Bank USA and Goldman Sachs International for Entry of an Order Pursuant to 11 U.S.C. § 503(b)(3)(D) and 503(b)(4) for Allowance and Reimbursement of Reasonable Professional Fees in Making a Substantial Contribution in These Cases [ECF No. 29240]

Hearing re: Trustee's Motion for Authorization to Sell Shares of Navigator Holdings, Ltd., and Related Relief [LBI ECF No. 5220]

Hearing re: Motion of Elliott Management Corporation For an Order, Pursuant to 15 U.S.C. § 78fff-1(B), 78fff-2(B) and 78fff-2(C)(1) and 11 U.S.C. § 105(A),(I) Determining the Method of Distribution on Customer Claims and (II) Directing an Initial Distribution on Allowed Customer Claims [LBI ECF No. 5129]

Hearing re: Motion of Fidelity National Title Insurance Company to Compel Compliance with Requirements of Title Insurance Policies [ECF No. 11513]

Hearing re: Motion of Giants Stadium, LLC, for leave to Conduct Discovery of the Debtors Pursuant to Federal Rule of Bankruptcy Procedure 2004 [ECF No. 16016]

Hearing re: Amended Motion of Ironbridge Homes, LLC, et al. for Relief from the Automatic Stay [ECF No. 23551]

Hearing re: Lehman Brothers Special Financing Inc. Working Group's Application for Entry of an Order, Pursuant to 11 U.S.C. §§ 503(b)(3)(D) and 503(b)(4) for Allowance and Reimbursement of Reasonable Professional Fees and Actual, Necessary Expenses in Making a Substantial Contribution in These Cases [ECF No. 29239]

Hearing re: Cardinal Investment Sub I, L.P. and Oak Hill Strategic Partners, L.P.'s Motion for Limited Intervention in the Contested Matter Concerning the Trustee's Determination of Certain Claims of Lehman Brothers Holdings, Inc., and Certain of Its Affiliates [LBI ECF No. 4634]

Hearing re: Motion of Grace Farrelly for Relief from Automatic Stay [ECF No. 25205]

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P R O C E E D I N G S

THE COURT: Be seated, please.

Good morning and happy anniversary.

This is the fourth anniversary of the commencement of the SIPA case and the fourth anniversary of the sale hearing to Barclays.

MR. SHORE: Good morning, Your Honor.

THE COURT: Good morning.

Nice to see you, again.

MR. SHORE: Chris Shore from White & Case.

I'm first on the agenda and I think we just agreed that I would just stand up and start.

We're here on the application of the ad hoc group of Lehman Brothers' creditors for reimbursement of fees and expenses incurred in connection with the prosecution of these cases under Section 503(b). We filed our motion on July 3rd seeking $9.68 million in attorneys' fees and 411,000 in expenses, 1.77 million in fees and 82,000 in expenses of AlixPartners, our FA, and 830,000 in fees and 24,000 in expenses for Molinaro and advisors, an essentially non-testifying expert.

We received no objection from LBHI or any other debtor.

We did get an objection from the U.S. Trustee. With respect to the attorneys' fees, they had raised

objections about the keeping of time and the following of guidelines and a more substantive objection as to whether the financial advisors can get paid at all under Section 503(b).

There was also a response by the committee suggesting that the fee review committee may want to review the fees and expenses.

We adjourned the initial application to address the concerns, in particular, the U.S. Trustee's concerns. We had numerous calls with them and two in-person meetings and as a result of that, we agreed to resolve the attorneys' fees and expenses today and defer the issue of the financial advisors and that substantive issue of law as to whether they can get reimbursed at all under Section 503(b) to a later date.

And I think you'll find that the other applications are going to proceed on that basis as well today.

We have agreed to a $455,000 reduction in fees and to defer $115,000 of expenses related to FAs to a later date to resolve the U.S. Trustee's objections, with respect to lumping of time, duplication of efforts and time spent doing what the U.S. Trustee contends is unreimbursable time.

We, obviously, thank the U.S. Trustee for spending a great deal of time, both with us and with the other ad hoc

counsel and financial advisors, to address those concerns.

Where we stand today, then, we're currently pressing an application for $9,107,547.18 in fees and $411,665.29 in expenses, for an aggregate of $9,519,212.47.

All of that are fees and expenses actually paid by members of the group to White & Case for its efforts in representing the ad hoc group. They respect fees and expenses under 503(b)(3)(d) incurred by the group in what we contend was a substantial contribution to the LBHI stake in these cases.

In the application of paragraphs 13 through 57, we laid out our view as to how the group did provide a substantial contribution, including its involvement in the plan process and negotiations, addressing inter-estate sensitivities and monitoring LBHI specific issues.

White & Case did represent individual creditors or group-specific activities. That time has been taken out of the application and we wrote off approximately 500- -- or have not pressed 500,000, approximately, of fees which would be not LBHI-centric, but rather either group-centric or creditor-centric.

No party has objected to the contention and the evidence of substantial contribution by the group. I'm happy to address any concerns or questions the Court might have with that and we would ask Your Honor to grant the

application, just with respect to White & Case for the fees and expenses and then defer and we need a setting for a later date to address the issue on the financial advisors.

THE COURT: Okay. I'm kind of surprised to see you stand as the first order of business today, and one of the consequences of doing this piece mail, applicant by applicant, is there a lack of full context in the record as to what has preceded this and I just wanted to make a couple comments.

First of all, I fully accept the proposition that your group made a substantial contribution in the case and I base that not only on my review of your application, but also on the basis of my empirical experience and having sat here through every hearing that this case has had over the last four years.

The accomplishments in this bankruptcy case speak for themselves and no one group can take credit for it; it's an interactive process that produced a consensual outcome of remarkable proportions. That having been said, I think it's also important to note for the record that in the interval following the filing of the substantial contribution applications, not only brought on behalf of your clients, but on behalf of the other applicants today, the fee committee weighed in with a suggestion that its mandate be expanded to include a review and analysis of each of the

applications, including the application that you're advancing.

One consequence of that, and I just wanted to put this on the record, is that a telephone conference took place a few weeks ago, during which the Office of the United States Trustee, through the U.S. Trustee herself, made a specific request that decisions be deferred with respect to the role of the fee committee until each of the applicants had a full opportunity to discuss the objections that had been lodged by the Office of the U.S. Trustee.

I take it from the comments that you've just made, Mr. Shore, that during the interval between that telephone conference and today's hearing, conversations took place at some length between each of the applicants and the office of the U.S. Trustee, and that issues with respect to the amount of your application, and I take it from the other filings, each of the other applications had been resolved in a setting in which the Office of the United States Trustee has not acknowledged that, in fact, substantial contribution as been shown, that being a question for the Court.

I simply wanted to put that context into not only the assessment of your application, but each of the other applications that will be following yours.

MR. SHORE: Thank you very much, Your Honor. I appreciate the Court's comments.

I think the -- to the extent necessary -- the creditors' committee, who had made the suggestion that the fee committee look at it can address whether their concerns have been resolved, and I also believe the U.S. Trustee can speak to the issue of the resolution that I've announced on the record and also the lack of any need to go to the review committee at this point since they performed the substantive review of the fee applications on a line-by-line basis.

THE COURT: Now, just so I'm clear, and something that I think is obvious, the approval of this application for substantial contribution does not result in a windfall or a double payment to White & Case; instead, White & Case is acting as a representative of its clients and the approval of the application will, in effect, reimburse to some extent amounts that have been previously billed and collected from your client group.

MR. SHORE: That is correct, Your Honor.

THE COURT: Okay. Fine, you're application is approved, but I do have one question and it's a question that relates not only to your application, but to other applications that are pending today.

It is not clear to me how the unresolved legal question associated with substantial contribution for financial advisors is to be resolved. Is that a subject that is something that can be negotiated or is this a

principle dispute that will ultimately involve the presentation of conflicting views and an adjudication?

MR. SHORE: I think that remains to be seen. Where we stand right now, we have an application on file and a partial, now, unresolved objection from the U.S. Trustee. We have committed to sit down with the U.S. Trustee and meet to discuss the issue further, to have the financial advisors, one of whom has already met -- from our group -- has already met with the U.S. Trustee's Office to see if we can come to some consensual resolution of the issue that would not require the Court to have to resolve the legal issue.

To the extent that we can't resolve that and we believe that we can get it probably done in the near term and look for an October setting on this, we would envision filing reply papers on our application laying out our views as to why financial advisors can be reimbursed under 503(b) and then we'll address it in front of the Court.

THE COURT: Okay.

MR. SHORE: And we have been working cooperatively and we're hopeful that we can come to some principle resolution between the parties and not have to involve the Court.

THE COURT: All right. Fine.

Thank you very much.

MR. SHORE: Thank you, Your Honor.

I have an on-going commitment with ResCap right now, if I may excuse myself, Your Honor?

THE COURT: You may be excused.

MR. SHORE: Thank you.

MS. SCHWARTZ: Your Honor, may I make one comment?

THE COURT: Surely.

MS. SCHWARTZ: For the record, Andrea Schwartz on behalf of Tracy Hope-Davis, the United States Trustee.

Good morning, Your Honor.

THE COURT: Good morning.

MS. SCHWARTZ: And with me, here, is Susan Golden. As Mr. Shore said, they spent a good period of time talking with us on the phone -- "they" being Mr. Shore, his colleagues. We also met with Lisa Donahue from AlixPartners to discuss the United States Trustee's objection.

We also met all -- just so that you have the context, Your Honor -- we also met with all the other applicants for -- the other 503(b) applicants -- their professionals. So, we met with the Brown Rudnick attorneys. We met with the Cleary Gottlieb attorneys. We've also met with Blackstone; we've had an initial meeting with Blackstone.

I think it's important to advise the Court that we had extremely positive discussions with the professionals.

They were very candid discussions.

As Mr. Shore mentioned, we did our U.S. Trustee thing and did a line-by-line of all the time records and we spoke with them about all of the issues and concerns that we had. The applicants met our issues 100 percent. I mean we really -- it was a very positive experience with respect to those meetings.

With respect to the other -- and as you'll hear today, Your Honor, we have -- and as Your Honor noted, we didn't take a position on substantial contribution; we deferred -- we believe that was for the Court. We didn't object, but we believe that was a Court finding.

With respect to the financial advisors, we have met, as I said, with Blackstone and we have met with AlixPartners. We haven't yet had a meeting with Mr. Molinaro because of scheduling and the holidays, et cetera. In addition, for personal matters, the United States Trustee has been out of commission for the past week due to family issues, but we expect to continue those discussions.

And what we're trying to do, Your Honor, is trying to see if there's some way we can reach a resolution without having to bring a legal issue before the Court. That's -- we're all trying to put our heads together and seeing -- you know, we're talking very openly and what the issues are and

seeing if that's possible. And that's what our goal is at this point.

I think Mr. Shore had put the adjourned date out to the 10th of October, if I'm correct? Right.

And that seems to work with all the parties, so we're hoping that we will be able to be back before the Court by the 10th to either advise the Court one way or the other, whether we've been able to have a resolution or whether or not there will be a legal issue that will have to be decided by the Court.

THE COURT: Okay.

MS. SCHWARTZ: Thank you, Your Honor.

THE COURT: I appreciate that report.

MR. LEVINE: Good morning, Your Honor.

Steven Levine, Brown Rudnick, LLP, for an ad hoc group of LBT, the noteholders.

I don't want to repeat what Mr. Shore said, but I want to highlight some things because our contributions took place largely outside of the Court's purview. We went into --

THE COURT: I'd like to interject and just say that substantially all of the substantial contributions that are at issue are took place outside of the Court's purview. It's not limited to yours.

One of the challenges in a case such as this is

that the contribution is evident only after the fact, not while it's occurring. The fact that consensus was reached is the principle evidence on the basis of which I'm able to draw these conclusions, not on the basis of close inspection of what you've done.

MR. LEVINE: Thank you, Your Honor.

So, let me highlight some of the aspects of our application. First, our initial application was approximately $3.8 million dollars. That represented a good faith allocation of time for which we felt was justified for a substantial contribution claim. We also have an on-going representation in Europe and we excluded all that time, so the amount that we initially sought was a little bit more than half of the total fees in the case.

Secondly, we went through the process with the U.S. Trustee's Office as others have described and we're thankful for their time and willing to work constructively with us, and as a result of that process, our total fees were reduced by -- and expenses -- were reduced by approximately $397,000 to roughly $3.3 million dollars.

All of our fees have been paid by our clients and since I have a client sitting in the courtroom, I can assure you that all of the fees that we get allowed by this Court will be returned pro rata to our clients. There's nothing here that Brown Rudnick will get any sort of windfall; we've

been fully paid and just want to reimburse our client for the expenses they incurred during the case or the portion that represents a substantial contribution.

Again, no one contested the -- whether or not we made a substantial contribution in the case. The U.S. Trustee took no position as the Court well knows. The official creditors' committee included us among all applicants in saying that we had a colorable claim.

I can -- if it's helpful to the Court, I can go into more detail of exactly what we did. As we said in your papers, our two primary areas of contribution related to the structured settlement valuation methodology. My client's notes were complicated notes that didn't simply provide for fixed payment for payment of principal and interest on a fixed date. They were the reverse side of derivative transactions, so that many of them provided for a payment equal to the movement in a public or privately traded stock index or public or private stocks on a date far into the future.

Some of them had a final payment equal to the greater of a fixed percentage of par or what amount that could be derived from the formula. We spent a lot of time and effort over the two years culminating in August of 2011 working with the debtors and other constituencies in the case to come up with a valuation methodology that was

practical, easily applied; otherwise, the debtor might have faced 3500 plus separate valuation trials and was perceived as being fair, not only by all those people who held structured securities, but by all of the participants in the case.

The total amount of structured securities claims were about $40 billion dollars. Our client's share of that nominally is around $3 billion dollars. So this was a benefit to all other structured security claimants and also helped in the resolution of the case.

In terms of the global settlement, our clients held notes that were initially issued by LBT, which is Lehman's Dutch finance subsidiary. All those note proceeds were lent through an intercompany claim to LBHI, so our claimants were the primary beneficiaries of two claims against LBHI. The notes were directly guaranteed by LBHI and they had the benefit of an intercompany claim from LBT.

An as LBHI creditor, they shared and interest with Mr. Shore's clients in maximizing the pool of assets available to LBHI, but as claimants who held two claims against the single debtor who were the direct beneficiaries of the one claim and held a guaranteed claim on another, they were adamantly opposed to substantive consolidation. So, in that sense, we had a commonality of interest with the non-consolidation proponents because the last thing we

wanted to see would be all the estates consolidate and have one claim.

We were able to weave that, and, we think, play a constructive role in reaching a global resolution, one that benefitted all LBT constituents, not just our clients and increased the total pool. And in our papers, we quantified what the benefits were and go into more detail what exactly our contributions were.

Again, I can answer any questions or expand on that if the Court would like.

THE COURT: I do have one question which may reflect a lack of full appreciation of the role played by your group, so this would be useful for me to know.

To what extent did your group interact with Rutger Schimmelpenninck and the LBT case in Europe, and also counsel for Mr. Schimmelpenninck, here in the United States, in pursuing your respective positions, and to what extent were you, in effect, a free agent?

MR. LEVINE: We interacted with the Dutch joint bankruptcy trustees and their counsel constantly. The co-lead partner on this engagement was one of our restructuring partners in London, who's Dutch by birth in training, so, we were able to work together and interact with the Dutch joint bankruptcy trustees and their counsel in the Netherlands. In fact, we met with them as recently as last Tuesday to

discuss the Dutch case, and at the same time work with them and Tom Mayer who represented the joint bankruptcy trustee in the United States in fashioning a holistic solution that will cover both sides. In that regard, I know a lot more about how you hummelgate (ph) an accord, which is the Dutch version of confirm a plan than I ever thought I would when I went to law school.

And we spent a lot of time in our negotiations with the debtors helping to deal with issues that ultimately ended up in the settlement agreement reached between the joint bankruptcy trustees and the debtors, such as the allowed amount of the intercompany claim, which was all part of the U.S. settlement. So, it was an integrated representation on both sides of the Atlantic that, I think, worked well for our clients and worked well for both the cases.

THE COURT: All right.

As you correctly observed at the outset, your substantial contribution is harder to identify from the bench than it is from the prospected of those who participated in meetings, negotiations and conferences that lead to the settlement that I'm aware familiar with.

But in the absence of objection and on the basis of your application and the representations that you've made today, I find that your group did make a substantial

contribution and I approve your application.

MR. LEVINE: Thank you, Your Honor.

MR. O'NEAL: Good morning, Your Honor.

THE COURT: Good morning.

MR. O'NEAL: Sean O'Neal, Cleary Gottlieb, on behalf of Goldman Sachs Bank and Goldman Sachs International, we, like others have filed a substantial contribution claim on behalf of Goldman Sachs. Our procedural posture is very similar to the procedural posture of the other applicants that you've heard from today.

Initially, the U.S. Trustee had filed an objection questioning some of the fees set forth in our application. We had a series of conversations and meetings and ultimately were able to resolve their concerns by eliminating approximately $180,000 from our request.

The creditors' committee didn't object. The debtors didn't object. There was a question about whether or not the fee committee should become involved, but based on discussions with the fee committee, they told us that they did not need to -- or expect to become involved if we had resolved the U.S. Trustee's objections.

So, from our perspective, there are no outstanding objections and nobody has contested whether or not Goldman Sachs made a substantial contribution. We recognize that this is, ultimately, the Court's determination.

Our application and supporting declaration set forth the tasks that we did and the services we provided, that we believe constitute a substantial contribution. Notably, we excluded Goldman's specific actions, such as the proof of claim and other actions and focused only on those activities that would contribute substantially to the estates.

In particular, during the course of these cases, Cleary Gottlieb and Goldman Sachs took the lead role in drafting position papers that were circulated among the debtors and various creditor constituencies concerning some of the most relevant and hot topics in the bankruptcy, substantive consolidation, recharacterization, racers and other matters.

We had also, at Cleary, took the lead role, and nobody has contested that, in drafting and negotiating the non-con plan and the related disclosure statement. And we will be taking the lead incompetent negotiating the planned support agreement and the sequencing stipulation and all of the documents that flowed from the global settlement.

Keep in mind that the non-con plan proponent group was a diverse group of approximately 20 creditors across various levels of the capital structure, so mostly, LBSF, but LCPI and other operating companies. And as you recall, our main goal was to not have a substantive consolidation

plan and to respect the separateness of the various operating entities.

In addition, Cleary Gottlieb and Goldman Sachs took the lead role in improving the proposed framework for the settlement of the big bank derivative claims. As you may remember, there were approximately $10 billion in claims and we were able to arrive at a negotiated settlement through the drafting and negotiation of a model termination agreement that was adopted by, I think, at the time of confirmation, 8 of 10 of the big bank creditors.

So, through all these efforts, Goldman Sachs operated as a voice of a variety of creditor constituencies at the operating company level, and, you know, as I mentioned, there are no pending objections, so we would request that Your Honor would approve our application as modified to accommodate the U.S. Trustee's concerns.

THE COURT: What happens to the money?

MR. O'NEAL: Certainly.

Goldman has paid nearly all of the fees that we're seeking, so, clearly, we will not be seeking to double dip, and the fees that will -- or the amount that will be paid by LBSF will be sent to Goldman Sachs to reimburse it for its payment of our fees.

THE COURT: Is there any sharing understanding in place between Goldman and any other similarly situated

members of the group of creditors opposed to consolidation?

MR. O'NEAL: Not with respect to Cleary's fees. Cleary's -- the engagement was with Goldman Sachs.

THE COURT: All right.

MR. O'NEAL: Your Honor, I do have a proposed form of order.

THE COURT: Is that consistent with the one that I've seen most recently?

MR. O'NEAL: It is; it's the one that we filed yesterday.

THE COURT: Okay. That's fine. You can hand that up.

And to be clear, for reasons similar to the ones that were expressed during Mr. Shore's presentation, the dialectic of a consolidation plan, a non-consolidation plan and a plan in the middle prove to be a useful means to putting this case to a culmination of a consensus and no one party can take credit, but all parties can take credit.

I find that there was a substantial contribution, so you're application is approved.

MR. O'NEAL: Thank you, Your Honor.

I have a hearing in ResCap as well, so if I may be --

THE COURT: You may be excused.

MR. LEVINE: Your Honor, may I be excused?

THE COURT: Anybody who wants to be excused can leave.

MR. LEVINE: Thank you, Your Honor.

MS. SCHWARTZ: Thank you, Your Honor.

MR. KOBAK: Good morning, Your Honor.

James Kobak, Hughes Hubbard & Reed, on behalf of the SIPA trustee.

Your Honor, there's two matters on our calendar for today. The first is our motion for approval of the Navigator Gas entity, which has been opposed by Elliott, and the second is Elliott's motion with respect to an all-cash interim distribution.

I believe Mr. Ross and others familiar with the Navigator transaction may be here in court and I think if Your Honor agrees, we would proceed to go ahead with that matter first, which Mr. Lee is going to handle for the trustee.

THE COURT: That's fine. Let's proceed with that.

MR. KOBAK: Thank you.

MR. LEE: Good morning, Your Honor.

Ken Lee from Levine Lee for the SIPA trustee.

Your Honor, we are moving this morning for the approval of the sale of LBI shares in Navigator Holdings, Ltd., to the WL Ross & Co. As Your Honor's aware, we were here before Your Honor on August 23rd when Your Honor

entered the procedures order without any objection from any party, and we have, since that time, made some supplemental submissions as well as a supplemental declaration, as well as a response to the one objection that was received from Elliott.

Without spending a lot of time repeating what we put in those papers, I would just briefly summarize here that we're talking about a minority interest in a privately held company. The shares are not traded on an exchange and there appears to be no active trading market for these shares. And as has been pointed out in the papers, there are significant challenges with selling an interest of this sort and in this situation.

The trustee retained direct corporate finance to advise him on two separate matters. The first would be the process that was undertaken to attempt to find a buyer for these shares and the second was that Deloitte performed an analysis that attempted to imply a price for the Navigator shares and the conclusion was a process that resulted in the current proposed transaction with WL Ross at a price that falls in the middle of the range that was the result of the Deloitte analysis prior to Deloitte taking in discounts for things like lack of control, liquidity, marketability, or the existence of a shareholder rights agreement, all of which are present, as Your Honor is aware in this matter.

There were no objections as of August 23rd to the procedures order, and since that time, there has been a marketing and solicitation effort by the trustee's representatives to find other bidders who might be prepared to make a higher bid for these shares. As we have demonstrated and set forth in the supplemental papers, approximately 100 entities were contacted and the result of that process has been no offer to purchase these shares. And beyond that, no conversations which give the trustee any confidence that there is a potential buyer out there for whom it would be worth pursuing discussions at the risk of losing the current transaction which is on the table with WL Ross.

Under the purchase agreement, Ross may terminate the purchase agreement on -- after October 5th if a sale order is not entered by this Court. And so, what we're talking about is an opportunity to sell these shares for $100 million dollars or alternatively, I suppose if the objectors would have their way, so not approve that transaction, run the risk of Ross terminating and then going out into the world so see what we can achieve, and it's the trustee's business judgment that he has conducted an appropriate process under challenging circumstances, and that it is certainly better for the estate and for the customers and creditors of the LBI estate to go forward with

this transaction.

We regard the Elliott motion as little more than Monday morning quarterbacking. We have set forth our response to their objection in our papers and Ross has also, specifically, and quite clearly demonstrated some of the factual misstatements by the Elliott objection.

And unless Your Honor has further questions at this time from me, I would propose that I sit down and reserve the right to respond if there are other parties that wish to discuss these matters, here, before Your Honor.

THE COURT: I have just a few questions.

One relates to timing. I take it that given the amount of the transaction, which is material in the context of most bankruptcy case -- frankly, in the context of most transactions -- but in the context of this case, your own papers identify the amount at issue as essentially a rounding error in the numbers that we're dealing with. I have the recollection of .065 percent as being what this amounts to in estate assets.

Given that both the motion and the objection inconsequential to me, I must say that right at the outset. It's consequential to the purchaser, who is obtaining control, and it's clearly consequential to the estate in converting any liquid asset to cash, which is consistent with the trustee's mission. So, I don't have any quarrel

with respect to that.

I do question the timing, though. How did this come about now as an issue as opposed to last year or six months from now, and what's the consequence to the estate, if any, other than the loss of $25 per share, if this is deferred? Those are my fundamental questions to you.

MR. LEE: Yes, Your Honor.

Well, as Your Honor pointed out, one of the jobs of the trustee is to monetize assets to so, that they are available for distribution, both to customers as well as general creditors. And as we've discussed, this particular asset is a highly illiquid one, and one that in its current form, does not lend itself to the trustee's fulfillment of those responsibilities and so the trustee already took and effort beginning in the summer to attempt to find a way to monetize those shares and obtained a financial advisor to assist him in that regard.

Given the challenges and restrictions that come with trying to sell a block of shares like this, he worked very hard to find a way to monetize those assets and found a way to do so at a price that, based on objective measures, appears to be a reasonable one in the trustee's judgment.

So, yes, there is also the what if kind of Monday morning quarterbacking where you say, What if the trustee has taken a different approach or what if we reject this

deal now and wait around to see what we might get. And certainly, the theoretical possibility is perhaps somebody else comes along and offers more and we can make an arrangement with the Navigator board that was acceptable to them under these circumstances, but there's the equal, and, if not, we believe, the greater possibility that, in fact, that won't happen. And if that is the case, and Ross is still interested after that process has played itself out, I think we can all be certain that Ross will not be offering $25 a share, but will offering something significantly lower than that.

THE COURT: Well, we don't actually know that.

MR. LEE: We don't know any of this, Your Honor, but the question, I think, for the Court is has the trustee exercised reasonable business judgment in making the determination that this is the best thing for the estate, and in the trustee's judgment it is, and we don't believe that any of the issues raised by Elliott are sufficient to challenge the reasonable exercise of his business judgment.

THE COURT: Let me ask you about the representations made in the Cleary supplemental declaration. I read that as an indication that between the approval of the sale procedures and today's hearing, some significant effort was undertaken to identify perspective purchasers. It was not clear to me from reading that, that a similarly

diligent effort was undertaken prior to the sale procedures being entered on August 23, and so one of my concerns and I would just like express this now, is that the ability to find a buyer after one has signed with Wilbur Ross at a certain fixed price may be less favorable than if multiple buyers had been solicited prior to entering into that agreement.

So part of the concern I have, and it really hasn't been expressed in the Elliott objection as much as it's just an impression from reading the declaration, is that more may have been done for optical purposes in the brief period that we have between August and today to solicit potential purchasers than was done prior to signing with Mr. Ross' company.

MR. LEE: Your Honor, I would say in response to that that the experience of the last few weeks confirms that the results would not likely have been different if that effort had been taken earlier. Given the particular nature of these shares and the very aggressive position taken by the Navigator board that it intends to use the shareholder rights plan to defend the company. And we were aware of that in the summer and the trustee made the judgment that rather than having Deloitte make the 100 phone calls at that time, that the focus of the effort will be, as Mr. Coury (ph) set forth in his first declaration, to try and contact

the most likely parties that would be interested in acquiring these shares under the circumstances and try a do a deal.

The second thing I would say is that once we entered into discussions with the Ross company, they made it clear to us that they wanted us to enter into a deal with them quickly and not for us to go out and market these shares to other parties, and you'll recall that the first iteration of the purchase agreement contained a no-shop provision that prevented us from doing so. And at the time, the trustee had a different judgment to make which was do we continue to negotiate with Ross on these terms and try and find a deal or do we say, you know what, we want to go ahead and do some open marketing anyway and run the risk that Ross leaves the table as well.

So, that was the kind of judgment that the trustee had to make and we believe was a reasonable one given the circumstances at the time.

THE COURT: Okay. But in an answer to my question, many solicitations took place in the last few weeks than took place prior to August 23rd.

MR. LEE: That is correct.

THE COURT: Okay. Those were my questions.

Thank you.

MR. LEE: Thank you, Your Honor.

MR. DORCHAK: Good morning, Your Honor.

Joshua Dorchak with Bingham McCutchen, for Elliott Management Corporation.

I won't go over the details of our objection that we filed, but I wanted to follow up on a couple of things, first, that you mentioned, Your Honor. The first is to deal with the rounding error issue. The minimalistic percentage that the trustee applied to the value of these shares, by comparison with the estate, used a number of $117 billion dollars as the aggregate estate.

Now, that may have been true on the filing date, but with the transfer -- I believe is that takes into account the accounts that have transferred to Barclays --

THE COURT: How can you ignore the transfer to Barclays? It's the most significant transaction that has ever taken place in the context of any SIPA case in history. Are you saying that we should disregard it?

MR. DORCHAK: I'm saying today the value of those accounts that were transferred has nothing to do with the recovery by the --

THE COURT: By recovering by claims traders?

MR. DORCHAK: -- creditors still left in the case.

THE COURT: By parties who choose to buy into a case after the commencement of the case and then who seek to get in the way of transactions for financial advantage?

MR. DORCHAK: By parties who hold customer claims and unsecured general claims.

THE COURT: Yes, but Elliott bought into this. There's nothing wrong with that. It's very hard to buy into this and then assume a righteous indignation posture.

MR. DORCHAK: Elliott bought these claims, as you said, Your Honor, there's nothing wrong with that, and then became a creditor with the same standing who had been there from the very beginning, as far as I stand.

THE COURT: This isn't a question of standing; it's sort of a question of your moral position in the case.

MR. DORCHAK: All right, Your Honor.

I still want to talk about the rounding error thing, but if I can address --

THE COURT: No, you're fine. You can talk about the rounding error, it's just a question of the denominator. What's in the denominator is everything that has been administered in this case.

What is in the denominator from your perspective is what's left. I understand that.

MR. DORCHAK: The material denominator for the parties who hold claims today is like 26 billion the aggregate assets of the estate, at least using the April or -- I believe the April or May numbers.

But, as far as I understand it, these shares are

not claimed as customer property -- subject to customer property claims. They would actually be in the general estate, and if I'm right about the current numbers there, the current proposal for the general estate on the second allocation motion, as supplemented, is $1.8 billion dollars.

So, the math I did, Your Honor, was $110 million dollars that's -- we hope to do better, but $110 million dollars divided by $1.8 billion dollars and I got 6.11 percent for that, which, I think, the practical number that we should be looking at.

THE COURT: Are you the expert witness for these purposes?

MR. DORCHAK: No, Your Honor.

I'm just taking issue with the use of the 117 percent.

THE COURT: Do you have any expert witnesses?

MR. DORCHAK: No.

THE COURT: Do you have any witnesses?

MR. DORCHAK: I don't have any witnesses on behalf of my client.

THE COURT: Do you have any evidence to present?

MR. DORCHAK: I can describe why we are here and why we made the objection.

THE COURT: Well, I read the objection --

MR. DORCHAK: Okay.

THE COURT: -- and I understand some of the positions that you express, but I'm really talking more about what I should expect at today's hearing other than argument.

MR. DORCHAK: We do not have an affirmative witness of our own. If there's an opportunity to cross examine Mr. Coury (ph) we could consider that as part of -- to flush out the record, but we don't have a witness of our own.

THE COURT: Are there any questions that you intend to ask Mr. Coury, with respect to his declaration?

MR. DORCHAK: Not with respect to what's in his declaration itself -- with respect to what's not in his declaration would be allowed.

THE COURT: So, is it your intention to have an evidentiary hearing or just to make argument?

MR. DORCHAK: This is not an evidentiary hearing, Your Honor, I understand that.

THE COURT: This is a contested matter.

MR. DORCHAK: Right.

THE COURT: And I'm asking you whether or not you have any present intention to convert this into an evidentiary hearing.

MR. DORCHAK: If Mr. Coury is available for -- if they're proffering him to be cross examined, we would want

to cross examine him.

If that can't happen now for procedural reasons or because the Court wishes not to do it that way, we would defer.

THE COURT: Well, I think, perhaps, the most important procedural issue that we have is that Mr. Ross is here. He was a declarant with respect to the papers filed in opposition to your objection that I read last evening. So he's a declarant (indiscernible - 10:51:42) person, as someone who has endorsed the factual statements made in the papers filed on his behalf, I assume Mr. Coury is present as a declarant and available for examination. So, in a sense, there is already evidence in the record.

You've indicated that you have no witnesses and no evidence to present, but you might ask some questions. There's a timing issue here in that we have a transaction -- there is no other transaction, and there is a deadline for closing in transaction. We need to get on with it, so I just wanted to find out if we're going to have argument, in which I can assess the relative strengths of the argument or if we're going to have a full-blown evidentiary hearing.

If we're going to do that, we may or may not have sufficient time to complete today, in which case we're going to have to make some other scheduling arrangements in order to accommodate the transaction. I don't know if parties are

aware of this, but I must leave today by 12:30, because I'm speaking at NYU Law School this afternoon, so we have this morning to get this done.

I'm asking you what your intentions are.

MR. DORCHAK: If this must happen in the next 35 minutes, and leaving aside that there's something else on the calendar, Your Honor, I would like to continue to my argument for another 5 or 10 minutes in perhaps of in lieu of the cross-examination and of a desire to cooperate and be efficient. But I feel like I would present Elliott's side of the story.

THE COURT: I've Elliott's side of the story. If you want to embellish it with something that's not in your papers, feel free to do that. I've read your papers.

MR. DORCHAK: Okay. But you've also read the supplemental filings that came after our objection, and to which we haven't had a chance to respond, including the Ross materials. So, let me follow-up on that, which I haven't been able to address before, and let me do it this way.

After Elliott read the motion and found a couple of things concerning about the proposed transaction, mainly the time and the poison pill that seemed to be doing the opposite of what a poison pill is supposed to do and the price that seemed low given the circumstances, we contacted Hughes Hubbard and we had some discussions -- actually,

eventually had a discussion with Mr. Ross --

THE COURT: Can I stop you for a second?

You said the price seemed low.

MR. DORCHAK: Correct.

THE COURT: In whose judgment?

MR. DORCHAK: Well, obviously, we've seen what Mr. Coury thought the price range should be -- it was in his declaration, I understand that -- but the simple -- without being a financial expert myself, Your Honor, the response that we had to the price was how could it be the same as the price that the Ross company paid in the fourth quarter of 2011 and in the first quarter of 2012, for positions which did not give it control over the company, and that at a time when the company wasn't doing as well financially as it was when these negotiations were on-going. So -- but, without being an expert, it seems like there should have been two elements to bump up that $25 number and it didn't get bumped up once, yet alone twice. That was the concern about the price.

In these conversations that I mentioned, which I can't go into detail about a definition, I will say that we did make some progress and we appreciated the -- we appreciate the cooperation of Hughes Hubbard, as we always do, and we appreciated that Mr. Ross actually took the time and come and tell us some facts that made us a little bit

more comfortable about the Ross company's.

So, the scope of our concerns were narrowed, and the supplemental filing by Ross sort of shows -- in a way, it shows things we don't need to argue about. Just like we don't have a problem with the efforts that the trustee made post-agreement to sell these shares to the Ross Co., to go out, pick up the phone and try again.

Our concern is with the effort or the lack of effort at the front-end of the transaction, especially the failure to push back on the board a little bit to insist upon rights as a shareholder, insist upon the right to examine the books and the records, to push back a little harder on a board that seemed very uncooperative. Mr. Butters, the CEO, I got the impression that he was basically thumbing his nose at the trustee's advisors.

And I think -- in a nutshell, we said it in our objection that the trustee gave in too easily on this one, and that's what concerned us and that's why we filed the objection. We still feel like the deal wasn't good enough because this poisoned pill that was put in place by the company at a time -- I'm not even sure about the timing, Your Honor, but around the time that Ross expressed a desire to purchase these shares.

You've got a pill that's designed to make sure that nobody gets control of the company and it's all of a

sudden waived for the benefit of the one guy who can purchase these shares and obtain control of the company, and that didn't smell right to Elliott, and Elliott figures, well, why didn't the trustee get the same bad smell in their knows and push back on the board a little bit.

So, that's the essence of our objection. We talked about it with them. We didn't quite get comfortable. We got comfortable on the Ross side, but not so comfortable on the trustee's efforts to push a little harder on upfront.

And this is the first of, perhaps, many assets that are going to come before you in this case being liquidated, when everybody wants it to be the highest price. And you want it -- stand up now and say this sounds like one that the trustee didn't push hard enough for.

And if the trustee's response is, Don't worry, it's de minimis, that doesn't make us feel better. If a $110 million dollar asset is de minimis in the case, and then therefore no one has to concern themselves with how much the asset is sold for, I think that's a problem, too, Your Honor.

THE COURT: Well, I do think that that's really what the trustee was saying. I think the trustee was attempting to put what is obviously a material transaction in the context of a very, very big pool of assets. You're looking at the pool as a much smaller pool because your

concern is not what happened from years ago in the sale to Barclays, because what's happening now, and in that respect, from the back of your envelope, you see this as a much more material component of assets that might be available to general creditors.

MR. DORCHAK: Correct.

THE COURT: So, I understand that.

I also don't for a moment discount the importance of a $110 million dollar transaction. In any context it is, objectively, a significant transaction. The issue is as an insider to a process that has been not only been run by the trustee and his advisors, but the subject of declarations by Mr. Ross individually and by Mr. Coury, and given your own acknowledgment that you have no independent evidence to present, in what respect is your outsider's view of what you think the right process should be in any way meaningful for the Court in assessing a process that is prima fascia fair, based upon the representations of the trustee and his advisors?

MR. DORCHAK: Your Honor, once this became a Section 363 sale, according to the law, as I understand it, once we get past the prima fascia business judgment issue, we get to an examination of notice and sufficiency of price and good faith and we're still focused on a sort of simple caveman lawyer, not an accountant level, with how that $25

amount can be a fair amount in a sense of the highest amount that could have been reasonably achieved here. With a little more pushback, it could have bumped up.

THE COURT: Well, it's equal to the amount of other transactions that recently closed between Navigator and WL Ross. It's -- to the extent that there's a comparable transaction, we have it. What you're suggesting is that -- if I'm understanding your position -- this is a much more important transaction to WL Ross because it includes what should be a control premium in your view --

MR. DORCHAK: Right.

THE COURT: -- but based upon the papers that I've read from the purchaser, that may be illusory because there are various restrictions upon the purchaser that have been put in place by the board, so that what might to an outsider appear to be control, within the board may not be control at all.

MR. DORCHAK: I can respond directly to that, Your Honor. Again, I'm a simple lawyer, I'm not a mathematician.

THE COURT: You're not that simple.

MR. DORCHAK: Okay.

THE COURT: Self-deprecation really doesn't work here.

MR. DORCHAK: I know, but when it comes to business transactions. I don't do corporate transactions,

that's not my thing, but it seems to be that acquiring 61 percent of the company is acquiring control. And if you have a standstill in place that says for three years you can only make minimal purchases, okay. The fact is three years from now -- you're making a long-term investment, and in three years from now, you're going to control the company and you're giving the trustee zero premium for that.

And the $25 -- don't forget the other thing -- if I may, Your Honor, the $25, you say it's a comparable transaction back in the end of 2011 and the beginning of 2012, but we know the company was doing better in the second quarter than it was in the first quarter of 2011 when $25 was a good price.

It seems that perhaps the trustee didn't know that the company was doing better because there's another strange time issue in the matter, Your Honor. The same day that the trustee signs the share of purchase agreement with the Ross company is the same day that the second quarter financials become public, and I don't know that the trustee ever questioned to get an advanced copy of those numbers or how much they tried to find out about the current financial status of the company when they were negotiating this deal, as opposed to March 31st numbers that Mr. Coury says in his declaration was talking about.

Meanwhile, the Ross Co. has two members on the

board, so that gave them access to financial and other information that was available to insiders and not available to the trustee. Again, the trustee has been shut out by information from the CEO. They offer to go and enter a new confidentiality agreement and the CEO says no, and in the share of purchase agreement, we have an explicit acknowledgment amongst the parties that the Ross Co. is doing this transaction with perhaps superior knowledge.

And again, why not push back on that? Why not try to get the best information possible? Level the playing field with the person you're bargaining with a bit better.

These are on-the-face-of-the-deal type questions, Your Honor, that I don't think you need an expert witness to (indiscernible - 11:04:04).

THE COURT: Well, actually, you might.

Anyone can -- in the words of trustee's counsel -- try to be a Monday morning quarterback with respect to a transaction that has already been fully vetted, documented and ready to close. One of the more difficult aspects of your position is that I would suggest that you don't have someone sitting in the back of the courtroom, say, mystery purchaser examine as identified in the papers, who would be coming forward as your buddy and suggesting, You know what, we're prepared to pay more, but it's subject to diligence and it's going to take a little bit a time and we're not

committed, but we think a fair price is $25 plus something.

MR. DORCHAK: There's a reason why there's nobody here in the courtroom in that position, Your Honor, which is that the poison pill froze all the bidding.

THE COURT: I'm not quite -- I'm not quite -- I'm not quite done with my hypothetical.

MR. DORCHAK: Sorry.

THE COURT: My hypothetical is not geared to why there's nobody here, as much as the fact that there's nobody here making it very difficult to, in effect go with the risk of no transaction, because the trustee's business judgment is that a transaction with Mr. Ross' company at this price represents a reasonable exercise of judgment now, especially informed by the marketing of the company that took place over the last few weeks which produced only company X, and company X, an allegedly aggressive competitor was not prepared to commit.

MR. DORCHAK: Again, Your Honor, post-deal with Ross and pre-deal with Ross, I'm not sure that there's much of a point in going out and calling a thousand or a million people to try and get bids on the shares because the poison pill made it pointless, economically, for anyone to buy it.

The board didn't seem inclined -- I'm not sure that the trustee actually asked the board to waive the pill with respect to anybody else pre-Ross transaction, but it

certainly seemed like the board wasn't in the mood to do that. Ross was an exception to them somehow -- I don't know how -- but the pill had been waived once to the guy who would get control, I agree, three years later, but not for anybody else.

So, of course, there's no other bids; that was our problem. A 363 sale, you think there would be some sort of an auction, not necessarily published in the Wall Street journal, you know, just throwing the word out there generally, but at lowest a healthy competitive process, as opposed to one that shut everybody down. I was trying to come up with some metaphor -- they should be liquid shares, but the pill, you know, it didn't just chill the bidding, it froze it.

I was trying to come up with a way of saying that these shouldn't be shares that you can't sell to anybody. The reason you can't sell them to anybody is this pill with the dubious selective enforcement by the board.

THE COURT: Well, speaking of selective enforcement, in order to do anything about this in a sense of taking affirmative action, you basically have to go and litigate this in the Marshall Islands; isn't that right?

MR. DORCHAK: The trustee needn't file suit in the Marshall Islands to push back on the board about the -- about its -- about number one, the trustee's right through

LBI.

THE COURT: But that's not really practical, is it? I mean let's just think about it. You're suggesting that what the trustee should have done was to change the landscape of the business to, in fact, become an aggressive acquirer to interfere with corporate governing judgments made by the board and to take the hostile position with respect to the company, at least threaten it?

That's kind of amazing. I was reading that and thinking, Are you serious in suggesting that that's what the trustee should have done here? I suppose you were; you put the name on the papers.

MR. DORCHAK: I'm still, serious, Your Honor, that they're --

THE COURT: And you're saying that not doing that represents some deviation from the exercise of appropriate business judgment?

MR. DORCHAK: I'm saying that not doing that and perhaps not pursuing other sources -- I hate to use the colloquial phrase, again -- but push back other ways -- in not pushing back in other ways that the trustee could have -- not that this isn't a matter of his business judgment, but that the result is a price that's not fair because it doesn't reflect an aggressive attempt to get the highest price.

THE COURT: I understand your position.

MR. DORCHAK: Okay. Can I address the moral question, Your Honor, which I haven't yet?

THE COURT: Sure.

MR. DORCHAK: Okay. I can do it by referring back to occurred in this -- the hearing before we get here, in fact.

The issue is Elliott bought these claims, post-filing date.

THE COURT: There's nothing wrong with that.

MR. DORCHAK: Nothing with that, and so far so good, Your Honor; nothing wrong with that.

The point they want to make is when Elliott acts in its own interests, economic interests, like everybody practically, that appears before Your Honor, that it isn't necessarily not good for everybody.

And just really quickly to hearken back, we already heard about the substantial contributions of some folks in the first part of today's session, but Elliott was involved in the planned negotiation process that lead to the -- I agree, the incredible result, the plan that you confirmed, Your Honor Elliott and another claims traders. If you look at the list of planned support parties, in Exhibit 4, I think it is to the plan, and you take away the Lehman affiliates, you're left with the so-called big banks

and secondary market participants.

And by the way, many of the big banks have desks that participate in the secondary market, so thanks to the aggregation of positions and the narrowing of field for negotiations, it's actually the secondary market that got that deal done. I'm not saying that it's the only thing, Your Honor, but that was -- those folks made a material contribution to getting that case done.

I don't think debtor's counsel or committee's counsel would disagree with what I just said. It rendered negotiations practicable when there wouldn't have been if all the claims were scattered.

And the second thing I wanted to mention, also from December of last year when the LBH -- the Lehman Chapter 11 creditors made a motion to sell their interests in Neuberger Berman. Elliott and some other creditors thought the terms weren't good enough for the debtors and the hearing was adjourned and the debtors worked cooperatively with Elliott, the other potential objectors and the buyers, and what you do you know; the result was a deal with improved terms for the estate, the sale went forward on the adjourned hearing date with a better result for the debtors and it was -- Your Honor approved it and everybody one. The buyers didn't quite so good a terms as they originally had, but it was good enough that they went

through with it and that effort helped everybody.

I think I've made my point. Elliott is not an altruist, but it is also true that what Elliott -- the concern that Elliott takes in its own economic interest in the case is beneficial to all the creditors. That's my comment on the moral question, Your Honor.

THE COURT: Okay. And I wasn't suggesting in reference to the moral position of your client that there was anything inappropriate about what Elliott has done or is doing or immoral in the sense of something wrong about what Elliott is doing. I'm simply making an observation as a party in interest that entered the SIPA case voluntarily, it did so in order to profit for purchasing something at a price on the day of acquisition that would be presumably less than the amount to be realized when claims are ultimately paid here. We're going to be getting to that question of ultimate payment promptly.

And in that sense, it makes it somewhat more difficult to assume a position of moral indignation or outrage as to something that's happening in the on-going administration of the case, particularly when unlike a Chapter 11 case, the SIPA trustee and SIPC, itself, is entitled to a fair amount of appropriate deference from the Court in the exercise of business judgment. So, it becomes much harder, I think, for any party in interest to take the

position that you're taking and I think you're in a somewhat less favorable position simply because of the circumstances and you've been so characterized in the papers in which your client has been called -- as if in slight disparagement -- a claims trader.

I'm not disparaging Elliott as a claims trader or any other claims trader and I also acknowledge the fact that the liquidity associated with the trading in Lehman trades represented a favorable development for purposes of forming creditor groups and having those groups available to negotiate for real economic interest that ultimately lead to our plan, but that's not this case.

MR. DORCHAK: Thank you very much for those comments, Your Honor.

I acknowledge that there is discretion in the trustee. I acknowledge that the business judgment standard gives -- sets a high bar for those who would seek to object to a proposed course of action that falls under the business judgment rule. I am content to conclude our objection at that point. I don't see we need -- having gotten what I wanted to say out, Your Honor, I don't see any need to call any witnesses and we will rest our objection at this point, unless you have further questions.

THE COURT: I don't.

MR. DORCHAK: Thank you, Your Honor.

MR. HEIMAN: Good morning, Your Honor.

THE COURT: Good morning.

It looks like Mr. Ross has called in one of the big guns.

MR. HEIMAN: Well, I appreciate those remarks, and happy anniversary to you.

And I might say congratulations for being able to look back rather than look forward over the four-year period. It's quite a legacy.

My name is David Heiman, Jones Day.

And I'm here on behalf of WL Ross & Co., the buyer under the stock purchase agreement.

I would like to introduce -- you've already acknowledged his presence -- but I would like to introduce Mr. Ross, Wilbur Ross, who is the Chairman and Chief Executive Officer of WL Ross & Co., and as Your Honor noted, he is a declarant, and perhaps as contrasted to the objectors, he is here to speak to any questions Your Honor may have whatsoever.

And I, having worked with Mr. Ross for many years, I can tell you that he will answer them succinctly to clear up any problems or issues you may have, and we welcome that if you so choose.

As I was approaching the podium, of course, I'm reconfiguring everything I was going to say based on your

remarks. I think you've covered the water front that is put forth in our papers as well as the trustee papers and from our standpoint makes the objection look -- I hate to use the word "ridiculous" because that's viewed generally as hyperbole, but I'm searching for another word and don't find it.

So, I think what I'd like to do first is address a couple of the questions that you asked as it relates to Mr. Ross. Obviously, I can't answer for the trustee.

You asked, Why the timing, why now?

He will have to answer that, not me, but I can make some observations at least, that perhaps now is actually the very best time based on the fact that the stars aligned and Wilbur Ross and WL Ross & Co. appeared as the only buyer, perhaps the only buy ever, who knows?

I mean the rates agreement that is the subject of a lot of complaint is there. There's no way to blow away that rates agreement. I don't care if you go to the Marshall Islands or Delaware. Obviously, Navigator is miles away from this courtroom and is not the subject of any controversy in this courtroom, so, you know, the rates agreement, and the way the board acts with regard to strategic buyers and others is there. No one in this courtroom can do anything about it.

Timing as to Mr. Ross is, you know, the classic

private equity investor's timing. Time is money. Dollars have to be deployed. $110 million dollars in the scope of this case is still money and if the sale is not approved, he will go use it elsewhere. He wants to buy this stock. He wanted to buy it even though there was a rates agreement that precluded him from doing so. He went to the company at arm's length and asked for a waiver.

Yes, he's on the board, but no board member that he -- that represents WL Ross & Co. was involved in that discussion. He agreed to some onerous conditions, and I think maybe Your Honor meant it or didn't, but you said you understand the timing. I think -- and I'm not quoting you -- but I had a sense at the outset you said you wanted to know -- you could understand why Ross wanted to move now to, I think you said to obtain control. I think you said that.

So, I would like to add least address that because -- and you can ask Mr. Ross this -- he is not obtaining control. He has no interest in obtaining control. He agreed not to obtain control, but he believes in the shipping industry in the long-term. And so he's putting hit dollars in a place that he knows and God knows he's made other long-term bets that other people would have bet against and succeeded, so hopefully he will here.

THE COURT: Mr. Heiman, just for clarity, the

percentage held by LBI when aggregated with the percentages of equity currently held by WL Ross and/or its nominees would equal more than 50 percent.

MR. HEIMAN: 61 percent, yes.

THE COURT: So, in that sense, it's a controlling interest in the outstanding equity of the privately held company.

MR. HEIMAN: Okay. Maybe that's definitional, but --

THE COURT: I just want to be clear on this.

MR. HEIMAN: Absolutely. 61 percent, with which he can do nothing; in fact, less than he can do today.

You've read the conditions of the standstill. The rates agreement is the plain vanilla rates agreement that exists across corporate America. There's nothing we can do about that. Nothing you can do about it.

The control of information is in Navigator; not in Mr. Ross or the trustee. The trustee can speak to that as well.

There are many other things I could say about this, but you've done -- you've covered so much I think it's best for me not to repeat things you've already brought up. I would just like to say that the trustee solicited WL Ross & Co., so that if there's any implication -- and we felt that there was and we weren't happy about it -- the

implication of somehow that Ross had an inside track and exploited its position. That is not the case. The trustee came to them.

Why? Well, it's obvious. They own stock -- and this is what they do for a living; they invest money. Why isn't that appropriate? Why isn't that fortunate for this estate? That's why the timing is good.

Ross negotiated the standstill at arm's length like anyone else. There's no evidence that anyone else in the world who might have an interest in this business was entered in similar terms and the bottom line is that we're here today with the cash -- very simple transaction. A minority share of stock that is sitting here doing nothing and will not do anything in exchange for $110 million dollars cash, and we've all been through many sale hearings where they were complaining, perspective purchasers about the process, about the effort of the debtor, whether they were closed out or treated unfairly or couldn't get information.

With where are they today? There is no one waiting in the wings and we don't believe that there ever will be, so we think it's a clear case. Let's get this company -- I'm sorry -- these shares sold and get the cash into the estate.

Thank you, Your Honor.

THE COURT: Any other position as to be expressed here?

MR. LEE: Your Honor, Ken Lee, for the trustee.

If I may, since there have been some comments about the trustee's exercise of his judgment, I just want to respond briefly to them. Obviously we disagree with Elliott's contentions and I'm going to address the fact that their allegation that the trustee should have been more aggressive and gave in too easily. I think these are very easy things to say looking in hindsight, but quite to the contrary, we think that given the special challenges involved in trying to sell these shares, we think this deal is actually quite good and people should be saying that the trustee actually did quite a good job in managing to bring this deal in.

With respect to giving in too easily regarding the shareholder rights plan as Mr. Dorchak seemed to concede, really what he's suggesting is that we should have pursued active litigation against the Navigator board, both in the form of a proxy contest to replace the board members or perhaps litigation regarding the shareholder rights plan, which I think it's likely that if we had pursued that, we wouldn't be here today with the deal that's on the table and it's not clear what would have happened as a result of that protracted process. For that reason, we think that the

trustee's process and decisions showed very good judgment.

With respect to the issue about the control premium, as has already been indicated by Mr. Ross' counsel, it's not quite control that he is getting of this company. But there's another thing that I wanted to point out, which is if Elliott can tell me how you can extract a control premium from a person as smart as Mr. Ross when he knows well that there isn't any bidder in the world who would be acquiring control if they acquired the 34 percent that we're selling.

Even if we had no shareholder rights plan and we had -- with an open market process and all of these things which he imagines that he might have, you know, Mr. Ross is the only person who would break the 50 percent mark by acquiring 34 percent; nobody else would. And so, it's not clear to me that it's possible under those circumstances to get him to pay the so-called control premium, even if that were a possibility.

So, for all of those reasons, we urge that the Court approve their motion.

Thank you, Your Honor.

THE COURT: The Elliott objection is overruled and the transaction proposed by the trustee is approved.

I think that we've fully vetted the issues here through colloquy, although there is evidentiary support for

the Court's finding in the declarations of Mr. Coury of Deloitte and the declaration submitted by Mr. Ross, personally, in connect with the WL Ross position papers that were filed yesterday.

The transaction is what it is in the sense that this is not your typical sale of public securities that could be sold into a market. It's a private transaction, irrespective a Marshall Islands' company that happens to have adopted a so-called poison pill, the shareholder rights agreement that we've been adverting to during discussions this morning.

The existence of that agreement necessarily limits the marketability of the shares in question. The fact that there has been a selective waiver of the agreement in favor of Mr. Ross' company indicates that at least this moment Mr. Ross's company is the only known permissible purchaser for these shares and the price being offered fits within the range of value that has been ascribed to the shares by Deloitte, the only expert that has provided evidence in connection with this contested matter. In fact, the record speaks for itself, this is not only an objectively fair price, it's a price being paid by the only identifiable purchaser in a position to make the payment.

As to timing, a question that the Court independently interjected into this discussion, now is as

good a time as any, and it is difficult for Elliott in particular to be pressing for a liquidation of all assets held by the trustee in order to facilitate a distribution on the one hand and to be opposing the terms of a private sale on the other.

For the reasons expressed, the transaction is approved. I just need an order.

MR. LEE: Thank you, Your Honor.

MR. HEIMAN: Thank you, Your Honor.

MR. KOBAK: Your Honor, the next matter and the final matter on our calendar today is the Elliott motion with respect to distribution, which is, I believe, Mr. Duffy's motion.

MR. DUFFY: Your Honor, my partner, Mr. Glen will be arguing this morning.

THE COURT: Okay.

MR. GLEN: Good morning, Your Honor.

For Elliott Management, Your Honor, Jeffrey Glen, Anderson Kill.

The motion we're here on this morning, as the Court has alluded to the previous argument, is to have the Court determine that the method of distribution to allow customers -- customer claims should be one that requires a conversion of the cash and prompt distribution; and the key to this is promptness and practicality.

The statute that we're dealing with contemplates prompt payments out to customers. It's before four years. I don't think anyone can take the position that promptness is any longer a relevant consideration here. So, the question is what to do next, and the trustee's position appears to be --

THE COURT: I just have to interject. Promptness is still a relevant consideration here. It is relevant that the trustee engage in transactions and settlements that are calculated to maximize the realization of customers in this estate as promptly as practicable. It's still a relevant consideration.

MR. GLEN: We agree with that, Your Honor.

But the statute, the SIPA statute is set up in a way in which it contemplates what this Court and what the trustee and what everybody did promptly in getting the materials -- the customers to Barclays very swiftly. That is what was done well and it was done quickly, but what each customer is entitled to is their net equity valued at the time of the filing date and there's tension there.

Even if you were to hand out the customer accounts the day after the filing date, there would have been some market movement and that market movement would be in contradiction to the measurement of the net equity at the time -- as valued on the filing date.

And that tension, Congress, by enacting SIPA, determined that by moving the accounts of customers out of the bankrupt broker to other brokers who could then allow the customers to engage in their own decision to hold or to sell superceded the definition as set out in statute of what net equity is.

Now, in a matter of days or weeks or months, there's no problem with. One goal, the goal of customer autonomy, and getting the customers back into the ability to do what they wish with their own securities supercedes the fluctuations that occur, both up and down, in the net equity itself, but now we're four years later.

Over four years, the fluctuations have overwhelmingly surpassed the issue of customer autonomy.

THE COURT: Let me break in and just ask something. I don't mean to interfere with the flow of your argument, but I've read all the papers, including the papers in opposition to what your requesting, and those papers have suggested that you've raised some good points, but this is the wrong time to be deciding this motion.

The matter should be adjourned. Certain parties say it should be adjourned sine die. Some parties say it should be adjourned for 60 days. Many parties acknowledge that negotiations, sensitive negotiations, are currently and actively being pursued between LB on the one hand and the

trustee on the other, a negotiation that is material to the development of a prompt from today's perspective resolution.

Why are we proceeding with your motion today and why shouldn't I simply adjourn it now?

MR. GLEN: I think that is the key question, Your Honor.

Today is two and a half months after the filing of this motion. Was the motion properly filed back in the late spring? It was then three years and three quarters from the time of the filing date. At what point does a customer like Elliott find itself entitled to say that we understand that the trustee is acting in good faith. We understand this is the largest SIPA proceeding in the history of the world, but it has been over three years and we have been held up. We have nothing back. We don't have securities. We don't have cash. We have no way to move -- a situation in which other customers with allowed claims find themselves as well.

At some point Elliott decided we will bring this to the Court to bring to a head the problem of how long does promptness have to wait, and then two and a half months have gone by, and the position is taken by the various Lehman groups that you mentioned, none of them tell us what the plan is.

Now, it may be because there are sensitive negotiations going on -- we're not party to that -- but, at

the end of the day, those negotiations result in, for example, a mixture of the provision of specific securities and cash, that has to be offered to everybody else. At what point can the everybody elses come before you, Your Honor, and say, Not enough already -- that's not the right analogy -- but it is time for this to be moved to a point where we are no longer the necessarily inactive participants.

So, the answer to your question, Your Honor, is this motion could have been brought two years ago or it could have been brought yesterday or it could be brought a year from now. We have no control.

THE COURT: Yes, but the issue is not when you bring the motion. That's entirely up to your client's impatience and the judgment of counsel. The issue is when should the Court adjudicate the motion? The question is given what I know, why is today a day -- is judgment day for purposes of your motion, as opposed to 60 days from now or 90 days from now or 6 months from now to use your moving target?

My point is it's not about the filing, but about whether I should, as some parties have proposed, reserve judgment. In a sense, we're all here today, so I'm prepared to hear what people have to say, but my inclination based upon what I know is not to grant your motion today.

MR. GLEN: I understand the distinction Your Honor is drawing between the right to unilaterally determine when we bring this to the Court and the Court's obligation to make its own determination as to what the fair on the premise.

But over two and a half months happens to bring us to the end of summer, which is a time that the trustee proposed to the Court for its plan on how to turn the assets into cash and make a distribution or make some other distribution.

I am not saying that the trustee is not working hard or that the trustee is not acting in good faith, and it may very well be that things take longer than they otherwise necessarily do, but what is a better way to sound the alarm than to make the motion and have the Court then adjudicate it.

The motion simply requires that the distributions across the boards to the allowed claimants be in the form of cash. We do not know -- at least I do not know -- the parameters of the negotiations that are going on, but I do believe that as an accurate under both SIPA and the bankruptcy law, that the methodology that results in the distributions pursuant to the negotiations will have to be followed for the other parties. You can't treat people in equally in that regard, and we have no input there.

Now, were the Court to adjourn, as the Court indicates its predilection may be at this point, I'm not saying that the alarm will not be heard by the trustee. We are here. They are here. The position the Court has thus far articulated is not to deny the motion on the merits, at least at this point, but to adjourn it.

But what does adjourning get? All it does is allowed trustee to continue to engage in the negotiations, whatever they may be, that have been going on for a very long time.

Our motion simply says whatever those negotiations are -- and this will not affect the dollar amount -- whatever those negotiations are, at the end of the day, what the approved claimants will receive is dollar bills.

THE COURT: Well, that's part of the problem. The cart that you have wheeled into the courtroom -- there's a horse out there that actually should have come in here first. And so part of the problem is sequencing in the exercise of sound business judgment, based upon information that you and your client may know nothing about.

The parties that have responded to your client's motion have in no way castigated Elliott for filing the motion. In fact, your sounding of the shofar at this season with respect to the timing of distribution and the methodology to be applied is very appropriate.

No one is saying that Elliott, just because they're a claims trader as was said in the last motion, doesn't have the right to be impatient.

I'm impatient. I suspect that SIPC is impatient. I suspect that every customer is impatient, and we're talking about this, as I noted at the outset, on the fourth anniversary of the file of the case. There needs to be an end to this.

But Elliott is not the only party in interest that recognizes that. Based upon everything I know, all parties are committed in good faith to getting to some appropriate conclusion as promptly as possible.

So, what we're talking about today is not whether your motion makes sense, it may or may not make sense. One thing is clear to me: I can't decide it today based upon what you now know, and one of those data points came from creditor's committee.

The committee filed a succinct statement of recognizing some merit to the position being expressed by Elliott, but at the same time, noted that this was not the right time to decide the motion. A similar petition was advanced by the ad hoc committee, not surprisingly, because they now work in the same law firm, but I also recognize that they represent different constituencies.

The point to me, now, is since I'm inclined to, in

effect, grant the request for adjournment, or alternatively --

MR. GLEN: Yes.

THE COURT: -- if I don't adjourn it, so simply reserve judgment, which is maybe worse than adjournment. At least adjournment is another date with destiny for marking time.

I'd like to know why we have to press forward with this today in your view.

MR. GLEN: Well, Your Honor, we believe the Court ought to press forward today for the reasons I've articulated and which we've articulated in our brief. I'm not for a moment suggesting that the Court would be acting in a misexercise of discretion. To put the case off, the Court's position, as stated, makes a lot of sense.

But, our position is to push as hard as we can. If the Court believes that we are, say, at one extreme of a continuum of persons of interest here, and that that is too extreme a position for the Court to adopt today, then we would ask the Court to establish the shortest possible adjournment date.

THE COURT: Okay.

MR. GLEN: If the Court has no further questions?

THE COURT: No, I think we've really touched on what I think is the key to the present motion.

MR. GLEN: Thank you.

THE COURT: I can hear from everybody who wants to be heard on this now, but understand that I have read every submission.

MR. KOBAK: James Kobak, Hughes Hubbard & Reed for the trustee.

I think Your Honor has made your inclinations clear, so I'll be very brief. I think there's widespread agreement as Your Honor noted by almost everybody, if not everybody, other than Elliott and their counsel that now is not the time for this motion, whatever its merits might be and we do have thoughts about the merits.

We are in the midst of the discussions with interests that will determine whether there's a possibility of doing 100 percent or a very substantial distribution. A lot of resources are being devoted to this very complicated and important effort, not only by the trustee, but by the attorneys for LBIE and others.

We should not be distracted. We should not be hamstrung by some schedule. We shouldn't be required to adopt a one-size-fits-all fire sale method that's inconsistent with the interests of many customers, who have expressed a preference for a return of shares in kind.

I do want to make it clear that the trustee is working on contingency plans for a partial distribution. If

it does not appear shortly, the pending discussions will bear fruit. The trustee's goal is it's always been to make distributions that make sense, whether partial or complete, as soon as possible.

At the beginning of the case, as Your Honor noted, we transferred 10s of thousands of customers and billions of dollars of property to both Barclays and to Neuberger Berman when that was feasible, but the clausen (ph) difficulties of a partial distribution are substantial and very disadvantageous to customers.

On the idea that cash -- everything ought to be reduced to cash, I think that oversimplifies a lot of problems. There are a lot of customers who do not want to receive cash; they want to receive their shares. The statute does say that it's the trustee's duty to return property in kind to the maximum extent practicable in the wording of the statute. We don't contend that that doesn't mean that the trustee has some degree of flexibility, but clearly, there's a fiduciary duty to get property back in kind to customers where that's possible.

A cash distribution involves very severe tax consequences for people who face a forced liquidation in effect of their sale of their securities and may have to pay capital gains on it which can be a very severe penalty in many cases.

It's also not simple to sell our portfolio. We have some 3500 QCIPs that we have had to hire BlackRock to try to value. They've so far valued 5 or 600 of those. They're now in the process of determining how many of the other 3,000 they're even able to price for us.

So, the idea that we have a portfolio that can be quickly or easily sold or will achieve value if it's sold is very simplified, but I think we will know in a fairly short period of time whether we have a way forward to get people close to 100 percent. When we have that, if we have it in place, we will come forward with a motion, a series of motions in all probability that will detail exactly what our plan for distribution is, what people will be receiving, how we are proposed to go about it. Elliott and everybody else in this courtroom and every other customer in the case will have an opportunity to be heard on that motion at that time.

But we emphatically think this is not the time to be distracted from what we ought to be doing, which is talking to LBIE, talking to LBHI, talking to the other affiliates to see if we can get a substantial distribution for everybody.

THE COURT: I think that's a laudable goal and I think you should have some more time to achieve it, but I also think that to the extent that you can share it, it would be constructive for parties who were observing this

hearing to have some reasonable expectations as to when these things foreseeably will occur.

Can you tell us anything more or is it simply not possible to provide projections as to when this itch will be scratched?

MR. KOBAK: I think if Your Honor were -- and I had actually suggested this to Elliott -- if Your Honor were to adjourn the motion for 60 days, I certainly think by that time we would know whether we had an alternate deal or not; and if not, we would have started devoting even more time to contingency planning as to how we would do a partial distribution.

THE COURT: All right. Thank you.

MR. CAPUTO: Good morning, Your Honor.

Kenneth Caputo, on behalf of the Securities Investor Protection Corporation.

I will confine my remarks, Your Honor, to the inclined ruling of the Court to put this matter over. I second the statements by Mr. Kobak on behalf of the trustee that a 60-day time period does seem appropriate.

I did want to state on the record that for all of the parties attending here today and maybe listening on the phone, SIPC is committed to this process and is engaged in the process in many ways. I, personally, am involved. My team back in Washington spends considerable amount of time

on the matter.

SIPC is substantially committed as an enterprise to getting this matter moved forward to a resolution. I'll reserve argument on the merits of the Elliott motion for a date when it is adjourned to, but I didn't want to state affirmatively on the record that even Kenneth Caputo hears the shofar and SIPC hears the shofar.

THE COURT: Now, that's a major statement.

(Laughter)

MR. GRAULICH: Good morning, Your Honor.

Timothy Graulich of Davis Polk & Wardwell for the joint administrators of Lehman Brothers International Europe, and, I, too, will greatly truncate my comments this morning in light of Your Honor's preliminary views.

One thing that I did want to put on the record is the word "impatient." We've heard from Elliott's counsel that there is a degree of impatience. I'm sure the trustee is impatient. I can represent on the record that LBIE is impatient.

THE COURT: I already said that I was.

MR. GRAULICH: Yeah, and Your Honor -- so, we share the impatience.

We're impatient, not just in our own capacity, but in the fiduciary capacity for our hundreds of customers, who already have an 8 billion plus allowed customer claim that

we need to find a solution to the distribution issues in order to facilitate distributions to -- on our claim and the other allowed claims. So, we share the impatience.

But that being said, this motion does alight upon the very issues that we are discussing with the trustee, with respect to a global settlement of the LBIE issues, which involve among other things, not surprisingly, the method of distribution on allowed customer claims.

So, therefore, going forward today would, in fact, not only potentially interfere with those discussions, I would like to actually note that this motion today is actually interfering with discussions. There are a few folks in the gallery today with British accents that would rather be next door with Mr. Kobak and myself actually negotiating a settlement, as opposed to listening to the motions today.

Our clients have been in this week for very important meetings with the trustee trying to advance the ball, and as soon as this hearing is over, we're going to retreat back to Hughes Hubbard's offices to continue those discussions.

So, this is not -- I just want to make it clear for everybody, including Your Honor, that all available capacities being dedicated to try and move this process forward as expeditiously as possible. In fact, I'm sure

that the 60-day period that was referred to by Mr. Kobak does not suggest that the trustee thinks that it will take 60 more days to figure out whether or not they will come to an agreement with LBIE.

I can assure the Court that we will not be -- we do not envision that it would take 60 days to figure out if there's going to be a deal or not. The very much -- the expectation is this week in particular, the progress that we can make this week and sort of feedback that we get from the trustee even later today about certain particular points, I think, will go a long way to demonstrate whether or not we can reach a resolution of the LBIE issues.

So, while it may be appropriate to have this hearing adjourned for 60 days, I did not any suggestion to think that we think that there's going to be another 60-day process of trying to get to an agreement. I think that process is measured in days or perhaps weeks, but certainly not months, because as Mr. Kobak suggests -- and this is true for LBIE as well -- if we can't reach an agreement, we're each going to have to think of contingency planning on how to best administer our respective estates if there can't be a resolution.

So, we're cautiously optimistic. We're working hard, but there are certainly issues that separate us and the meetings this week will go a long way to determining

whether or not we can, in fact, reach our mutual goal of getting to a deal.

THE COURT: Fine. We should get you back to those meetings as promptly as possible.

MR. GRAULICH: Thank you, Your Honor.

MR. KRASNOW: Your Honor, Richard Krasnow, Weil, Gotshal & Manges, on behalf of LBHI and its affiliated controlled debtors.

THE COURT: Didn't you retire?

MR. KRASNOW: Obviously, it was semi-retirement. I advised the Court at the last hearing that I was reminded of that movie the Godfather. I certainly do not want to analogize this situation to the Corleones, but I am still involved.

THE COURT: Okay. Well, good to see you.

MR. KRASNOW: Your Honor, a couple of observations.

We do think that the concepts that were outlined in the Elliott motion are interesting in terms of the format of distributions. We believe that there will be complexities involved no matter what the considerations will be, and we do note, Your Honor, in reading the papers that were filed, both by the trustee and SIPC, that while there's certainly differences to the word "must" and the word "may," we read the positions that were being taken by both the

trustee and SPIC as meaning that there is flexibility, and indeed, when one can look at the proper context within which the decision will be made, at least initially by the trustee as to how to satisfy customer claims, that indeed cash will be amongst the things that the trustee will be considering in the context of satisfying customer claims as they relate to securities.

But we, with others, believe that now is not the time to make that determination. It must be made in the right context and it is a theme that we have certainly stated any number of times including with respect to the allocation motion, that in order to determine what is to be distributed, you really must have a better sense of what those customer claims are and the most significant customer claims, at least, that have been asserted after ours -- in fact, ahead of ours -- are those that have been asserted by LBIE.

So, we concur that now is not the time to decide the issue. Now is not the time for the trustee to make the determination as to how she -- he should exercise his discretion subject to Your Honor's approval and that this matter should be put over.

In that regard, however, having dates, we believe, is helpful, and while we concur that this matter should be put over, picking up on the observation that was just made

by LBIE's counsel, perhaps it would be helpful for a shorter adjournment so that the Court might be in a position to hear a status report as to the fundamental issues as to where things stand on the settlement negotiations, and if things are closer to resolution or that have been resolved, perhaps even in principle, at least to hear that.

And so we would suggest that while this matter ought to be deferred, perhaps for reporting purposes, something shorter than 60 days might be appropriate.

Thank you, Your Honor.

THE COURT: Okay. Thank you, Mr. Krasnow.

MR. DUNNE: Good morning, Your Honor.

Dennis Dunne, for the official creditors committee.

I'll be brief. I'm not going to parrot all the remarks, I just want to make two observations. One, on the merits, I don't think there's a lot of dispute at the end of the day, meaning under SIPA, I think that everybody recognizes there's a strong presumption in favor of in-kind distributions. It's not irrebuttable. It's not a categorical rule that applies across all assets and across all time. They also have a duty to maximize value for their creditors.

Behind that presumption of in-kind distributions rests the policy of fostering smooth functioning of the

capital markets by getting those assets up and out of a stockbroker's liquidating estate within a relatively short time from the commencement of a case. It's always just allowing investors to proceed with their economic lives.

At this point in the case, four years to the day, so long ago, I think we actually were debating how to reference the case. In the first few days, I recall an SIPC reference until we all finally landed on SIPC as the correct -- or more convenient, at least, pronunciation.

I think the markets have moved on and the remaining investors have been forced to kind of rejigger their economic lives without the receipt of these securities. So, I think that the unassailable point, and I think the trustee recognizes, is that at this point in time, they have more flexibility to monetize some of their positions and distribute cash than they did earlier in the case.

So, while the creditors committee believes that Elliott may be correct on the law, that doesn't require the trustee to actually monetize those assets, but it's one of the weapons they have in their arsenal as to facility distributions.

But there's also no magic to now, and there is a risk to now.

We've heard what those risks are. We're at a

sensitive period of time in the negotiations with LBIE, so we concur, and I think what you hear is the collective judgment of the parties speaking X Elliott, that there should be an adjournment. We had proposed 60 days. We think that that is reasonable.

Thank you, Your Honor.

THE COURT: Okay.

Do you have anything further to add?

MR. GLEN: Nothing further, Your Honor.

THE COURT: Fine.

I think that there is a clear consensus to adjourn the hearing without getting into the merits of the position expressed by Elliott in its motion or the defense has raised by the SIPA trustee and SIPC in response to the motion.

It is clear to the Court that this is perhaps the worst day for us to be deciding this motion, given the statements made by counsel for LBIE, that parties are actually poised to continue extensive negotiations that may materially facilitate the resolution of the largest claim in the estate, and, thereby, facilitate decisions by the trustee that will lead to, from the perspective of today, a prompt distribution.

And so, I'm going to adjourn in for approximately 60 days, but I am also going to ask that this be scheduled for, simply, a status conference at willfully the midpoint

between today and 60 days out. I don't have the calendar in mind for when dates have already been reserved, but you'll know just by checking your own calendars.

And with that, we're adjourned.

UNIDENTIFIED MALE SPEAKER: Thank You, Your Honor.

UNIDENTIFIED MALE SPEAKER: Thank You, Your Honor.

(Whereupon these proceedings were concluded at 12:04 PM)

I N D E X

C E R T I F I C A T I O N

I, William J. Garling, certify that the foregoing transcript is a true and accurate record of the proceedings.

William Garling

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Date: September 20, 2012